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Joseph Brown [to accompany bill H. R. no. 194].

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H.R. Rep. No. 175, 23rd Cong., 1st Sess. (1834)

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JOSEPH BROWN.

[To accompany bill H. R. No. 194.]

JANUARY 14, 1834.

Mr. DICKINSON, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to which was referred the petition of Joseph Brown, report:

That the subject of the petition of Joseph Brown was before the last Congress, and a favorable report was made thereon. Upon an examination of the evidence accompanying the petition, a majority of the committee concur in the views contained in the report made by the Committee on Indian Affairs, 17th February, 1832, and refer to that report in explanation of the grounds upon which the claims of the petitioner rest.

FEBRUARY 17, 1832.

The Committee on Indian Affairs, to which was referred the petition of Joseph Brown, have had the same under consideration, and make the following report:

This is an application to be paid the value of property taken, with force, by the Cherokee Indians, prior to the enactment of the laws regulating trade and intercourse with the Indian tribes, and in a time of peace between the Cherokees and the United States.

The facts stated in the petition, and which are supported by sufficient proofs, are, that James Brown, the father of the petitioner, arrived with his family and a considerable amount of property, on the Holston river, in East Tennessee, in the fall of 1787, on his way to the new settlements on the Cumberland river, in what is now West Tennessee; and having concluded, as the most convenient mode of transportation, to descend the Tennessee river, employed the succeeding months in building a boat, and making other preparations for that purpose. About the 1st of May, 1788, having first sought the consent and protection of the Cherokee Indians, through whose boundaries he had to pass, he embarked his family and property on board his boat. On the 9th of May, while floating on

the Tennessee river, in the neighborhood of one of the Cherokee towns, a party of about seventy Indians succeeded, by the grossest perfidy, in getting possession of the boat, without the slightest resistance. The Indians approached the boat in canoes, with their arms laying upon the bottoms of the canoes, and concealed with their blankets. Brown, however, not liking the circumstances of the visit, at first refused to permit the Indians to come on board, and was preparing for resistance, when the Indian leaders overcame his fears, by assuring him of their friendly intention, and by appealing to the treaty of friendship which existed between the Indians and the whites. Still, no sooner did the Indians find themselves in sufficient force on board the boat to overcome all resistance, than they began to seize upon the property; and, finally, upon being remonstrated with, and reminded of their profession of friendship, they murdered, in cold blood, Brown, two of his sons that were grown, and five other white men who were employed as hands on the boat, leaving not a male adult alive. Mrs. Brown, three daughters and two sons, minors, were taken prisoners, together with three negroes, the property of Brown. All the other property on board the boat was taken by the Indians, a schedule of which is furnished, as made out in 1805, and the value assessed and proved by a witness who saw it put on board the boat.

This outrage, on the part of the Cherokees, appears to have been about the first, or the very first, of a series of aggressions on their part, which brought on a state of general hostility between them and the whites. It does not appear that, when Brown embarked on board his boat, there was the slightest apprehension upon the frontier settlements that the Indians were disposed to do mischief. This is inferred by the committee, in part from the fact that Brown, after a residence upon the Holston, in the neighborhood of the Cherokees, for several months, embarked with a large family, without the least apprehension of Indian violence, and taking no other precaution against it than a passport from some one of the headmen of the tribe. But the best evidence of the fact, that, in May, 1788, there was a profound peace between the Cherokees and the whites, or, at least, that the Government so regarded the relations between the Cherokees and the United States, is to be found in the proclamation issued by the continental Congress in the month of September of that year, in which the military force of the Government was promised to protect the Cherokees against the intrusions of the whites upon their hunting grounds, and against any outrages upon the Indians themselves. The outrages committed by the whites upon the Indians, recited in the proclamation, were doubtless the retaliatory measures taken by the whites, in consequence of the depredations of the Indians upon the lives and property of the whites, which had been committed during the preceding spring and summer. That the discontents and ordinary warlike propensities of the Indians were aggravated by the settlement of the citizens of North Carolina within the Indian boundary, as prescribed by the treaty of Hopewell, in 1785, may be true; but still it is enough, in this case, that it be shown that when the murder and robbery were committed, a war had not actually broke out, nor was a state of partial hostility ever, before that time, known to exist.

In the treaty of Holston, in 1791, which was made in the hottest period of the Cherokee war, and which can scarcely be said to have abated its

fury, there was no provision for the restoration of property taken under the circumstances described in the petition. The next treaty was made at Philadelphia, in 1794, near the close of the war, but was not definitive upon all the subjects of dispute between the Indians and whites. But the 9th article of the treaty of 1798, which was the result of a final and general pacification between the Cherokees and the whites, contained a stipulation that "*all animosities, aggressions, thefts, and plunderings, prior to that day, should cease, and be no longer remembered or demanded on either side.*"

In the opinion of a majority of the committee, by the ratification of the 9th article of the treaty of 1798, the Government became bound to pay all such claims as the present out of the public Treasury. Though the obligation to pay this claim should not be perfect, yet the extraordinary circumstances and hardship of it appeared to the committee to entitle it to peculiar favor, considering it merely as an application to the sound discretion of Congress. It may safely be assumed that but few cases of a like kind, if any, can be presented. It is not like the case of a voluntary and known risk, incurred by a trading or other adventurer, who has calculated the profits as well as the danger of his enterprise, and who, when he has been arrested and despoiled by the secret or open enemies of the country, applies to be paid for losses incurred by his own rashness and folly.

The committee, therefore, have reported a bill.